United Nations A/AC.109/2006/9

General Assembly

Distr.: General
29 March 2006

Original: English

Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

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I. General[1]

1. Gibraltar is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.8 square kilometres, and according to Spain it is 4.8 square kilometres. In 2004, Gibraltar observed the anniversary of 300 years under British rule.

2. The latest census of Gibraltar, taken on 12 November 2001, assessed the Territory's civilian population at 27,495, of which 22,882 were Gibraltarians, 2,627 other British subjects, 961 Moroccans and 1,025 of other nationalities. According to the administering Power, the population of Gibraltar in 2003 was 28,605, with 23,069 Gibraltarians, 3,270 other British subjects and 2,266 of other nationalities.

II. Political developments

A. General

3. For detailed information on Gibraltar's political and legal system and on the British Overseas Territories Bill, which confers citizenship on citizens living in territories under British administration, as well as for information concerning Gibraltar's military installation, see the 2005 working paper (A/AC.109/2005/11, paras. 3-5 and paras. 9 and 10, respectively).

4. The United Kingdom's White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories",[2] presented to Parliament in March 1999, spoke of each Territory's need for a constitutional framework to suit its own circumstances and stated that suggestions from Overseas Territory Governments for specific proposals for constitutional change would be considered carefully. In June 1999, Gibraltar's House of Assembly set up a Select Committee on constitutional reform and on 27 February 2002 formally adopted a report on the matter. The Chief Minister of Gibraltar, Peter Caruana, said that the object of the exercise had been to achieve a constitution that "maximized self-government", in the language of the United Nations decolonization proposals, and modernized domestic institutions to reflect that. (See A/AC.109/2002/11, para. 6, for details of the proposed constitution, as reported by the local media.)

5. The Chief Minister submitted the constitutional reform proposals formally to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom on 22 December 2003 and suggested that the two meet informally to discuss the proposals and the way forward.[3] The Secretary of State acknowledged the importance of those proposals to Gibraltar and said that they would receive the most careful consideration. Negotiations began in 2005 aimed at modernizing Gibraltar's Constitution in a way that Gibraltar would remain British but in a non-colonial relationship with the United Kingdom. The discussions were held exclusively between the United Kingdom and a cross-party representation from Gibraltar, led by the Chief Minister and including the leader of the Opposition, Joseph Bossano. The results are expected to be known during the first half of 2006.[4]

6. For the first time ever, Gibraltarians took part in the European Parliamentary Elections in June 2004. According to the administering Power, Gibraltar was considered to be part of the South West England region for electoral purposes.[5]

B. General elections

7. The last general elections in Gibraltar were held on 27 November 2003. The incumbent Gibraltar Social Democratic Party obtained 51 per cent of the vote, followed by the Gibraltar Socialist Labour Party, which, in alliance with the Liberal Party, obtained 40 per cent of the vote. Peter Caruana, leader of the Gibraltar Social Democratic Party, was reappointed Chief Minister of Gibraltar. Joseph Bossano continues as Leader of the Opposition.

C. Recent developments

8. As mentioned in previous working papers, the negotiations between the United Kingdom and Spain on the subject of Gibraltar, relaunched in July 2001 in the framework of the Brussels Process, did not continue during 2005 (see A/AC.109/2003/3, paras. 52-54, A/AC.109/2004/7, paras. 51-53, and A/AC.109/2005/11, paras. 52-55). Instead, a forum for dialogue was established, separate from the Brussels Process, with Gibraltar participating in its own right. The framework of the talks was outlined in a joint press release by the Spanish Ministry for Foreign Affairs, the British Foreign and Commonwealth Office and the Government of Gibraltar dated 16 December 2004:

> "On 27 October 2004, the British and Spanish Ministers, Jack Straw and Miguel Angel Moratinos, made a joint statement in Madrid, on which the Chief Minister of Gibraltar, Peter Caruana, had been consulted and has separately expressed his agreement. Accordingly and without prejudice to their respective positions, the Governments of Spain and the United Kingdom and Gibraltar now confirm the establishment of a new three-sided forum for dialogue on Gibraltar, separate from the Brussels Process."[6]

9. In 2005 priority was given to that forum, discussing matters affecting people in and around Gibraltar. In the Trilateral Forum, dialogue is established on an open-agenda basis, each of the three parties having its own separate voice. Any decisions reached within the Forum must be agreed by all three participants. The meetings have been led so far by the directors for Europe of the Spanish Ministry of Foreign Affairs and the United Kingdom Foreign Office, José Pons and Dominick Chilcott, respectively, as well as by the Chief Minister of Gibraltar, Peter Caruana. Ministerial meetings have not yet taken place. The subjects covered include, inter alia, the airport, telecommunications, Spanish pensions, and border issues. For additional information see section VI.E below.

10. The positions of the administering Power, the territorial Government and the Government of Spain regarding the Trilateral Forum and political developments in 2005 are reflected in section VI of the present report.

III. Economic conditions

A. General

11. Gibraltar has no known natural resources and lacks agricultural land. In the past the economy was largely dependent on Ministry of Defence expenditures, but with the downsizing of the military base, the economy has become focused on tourism and the provision of financial services, such as banking, insurance, shipping and portfolio management. The currency of Gibraltar is the pound sterling. According to the administering Power, the gross domestic product (GDP) of Gibraltar in 2002/2003 was £507.2 million, and per capita GDP was £17,770; the economy grew by 8 per cent in real terms. Inflation in October 2005 was running at an annual rate of 3.2 per cent.[7]

12. In June 2005, the Chief Minister stated at the Parliament's budget session that Gibraltar's economy was in "excellent" health. The recurrent revenue and expenditure budget for 2004 had a surplus of £2.9 million, while public debt remained at 17 per cent of GDP. Government reserves (at £51 million) and revenues stood at record levels.[8]

B. Public finance

13. According to the administering Power, departmental revenue credited to the Consolidated Fund for the year ending on 31 March 2005 totalled £181.6 million, and departmental expenditure amounted to £149.8 million. The main sources of Consolidated Fund revenues were income tax, which totalled £75.8 million; import duties, which totalled £30.3 million; and general rates and salt water charges, which totalled £12.6 million. The main Consolidated Fund areas of expenditure for the period April 2004 to March 2005 were as follows: health and civil contingency, £26.3 million; education, £20.6 million; social and civic affairs, £18.1 million; environment, £9.4 million; housing, buildings and works, £8.9 million; utilities, £8.6 million; Chief Minister's office, £8.3 million; police, £8.2 million; treasury, £5.4 million; technical services, £5.3 million; customs, £4.1 million; tourism, £3.1 million; fire service, £3.1 million; postal services, £2.3 million; and port, £2.3 million.

14. Income tax is charged for the year of assessment running from 1 July in one calendar year to 30 June in the next on the basis of the income of the preceding year, except for income from employment or pension, which is charged on the basis of the income for that current year. The income tax rates applicable to individuals resident in Gibraltar range from 17 per cent on the first £4,000 of taxable income to 45 per cent after the first £15,000 (see A/AC.109/2001/10, para. 16, for details of income tax and exemptions). In his 27 January 2005 speech on the economy, the Chief Minister stated that the all-time high in Government revenue had allowed investment of more than £150 million over eight years in publicly funded capital projects. This in turn had made it possible to increase recurrent public spending in public services.

15. The British Foreign Office Minister revealed in March 2005 that the United Kingdom spends an estimated £80 million annually in Gibraltar. The offices of the Governor and Commander-in-Chief, Sir Francis Richards, required £1,268,000

(£1,187,000 running costs and £81,000 capital expenditure) in the financial year 2004-2005. Core Ministry of Defence costs are £78,491,000 (£64,698,000 operating costs and £13,793,000 capital expenditure). The Foreign and Commonwealth Office is also responsible for the Gibraltar Project Fund which has an allocation of £400,000 in financial year 2004-2005. Foreign Office Minister Denis MacShane also stated that the United Kingdom Government was committed to helping Gibraltar maintain its prosperity through open access to markets in goods and service.[9]

16. According to the administering Power, the level of private sector capital investment was around £44 million. Among last year's investments is the £1 billion coastline development project by MCB Ltd., which is the largest inward investment in Gibraltar's history.[10]

C. Trade

17. As reported in the 2005 working paper (A/AC.109/2005/11, para. 15), figures for 2003 show that total imports amounted to £715.5 million (up from £609.7 million in 2002) and total exports to £508.5 million (up from £428.7 million in 2002). In 2004, total imports amounted to £643.2 million, while total exports stood at £437.6 million. In 2005, the administering Power reported that nearly 28 per cent of Gibraltar's non-fuel imports originated from the United Kingdom. Other sources of imports included the Netherlands, Japan and Spain. Exports of goods of local origin were negligible. Exports consisted mainly of re-exports of petroleum and petroleum products supplied to ships. Import controls did not change during the period under review.

D. Banking and finance

18. Gibraltar's international financial services sector stems from the enactment of the Companies (Taxation and Concessions) Ordinance in 1967, which made provision for a special tax regime for offshore companies. In 1997, the Gibraltar Finance Centre was established within the Department of Trade and Industry as the focal point for all financial activities in the Territory. At the end of 2004, there were 18 banks authorized to conduct banking business in Gibraltar. As at 31 December 2003, there were also some 8,464 fully paid companies (down from 8,620 in December 2002) registered under the Companies (Taxation and Concessions) Ordinance. These companies pay a fixed annual tax, irrespective of profits made and whether or not their profits are received in the Territory.

19. A report issued in June 2000 by the Organization for Economic Cooperation and Development (OECD) included Gibraltar in a list of 35 jurisdictions that met the technical criteria for being tax havens.[11] On 28 February 2002, the Gibraltar Government agreed in writing to implement the principles required by OECD. On 14 March 2002, OECD announced that Gibraltar had made commitments to transparency and to implement an effective exchange of tax information with OECD countries by the end of 2005, and would thus be removed from the list of uncooperative tax havens on 31 December 2005.[11]

20. An independent review into Gibraltar's Financial Services Commission, published by the British Foreign and Commonwealth Office in January 2005,

concluded that the Commission had worked hard to ensure that supervision in Gibraltar complied with European Union obligations and, where those applied, established and implemented standards that match those required by legislation and practice in the United Kingdom.[12]

21. Despite Gibraltar's efforts to ensure successful regulatory systems, the Gibraltarian press reported that a major money-laundering crackdown in Marbella, Spain, in March 2005 had revealed a complex web of over 1,000 companies, many of which were registered in Gibraltar.[13]

22. In January 2005, the executive arm of the European Union ordered the United Kingdom to phase out tax breaks for offshore companies based in Gibraltar after finding the arrangement not in accordance with European Union competition rules. The European Commission said in a statement that the tax advantages were clearly selective, were financed from State resources and were liable to distort competition. The European Commission also pointed out that the regime did not satisfy the criteria set out in European Union law, under which State aid may be authorized. In February 2005, the administering Power announced its decision to abolish the Gibraltar Exempt Company Tax Regime by 2010.[14]

23. That decision having been taken, the number of companies benefiting from the scheme will be capped at current levels and no new entrants will be allowed as from July 2006. Referring to those developments, the Chief Minister of Gibraltar pointed out that while the agreement with the European Union did not contain everything that Gibraltar had wanted, it delivered sufficient certainty and stability.[15]

E. Transportation, communications and utilities

24. According to the administering Power, arrivals in Gibraltar are by land, comprising mainly day visitors arriving from Spain; by air, primarily from the United Kingdom and by sea, comprising ferry arrivals from Morocco and day-trip arrivals from cruise ships. Passenger arrivals for 2005 were as follows: 7,434,420 arrivals by land; 188,814 cruise visitors; 172,695 air arrivals and 6,787 ferry arrivals.

25. Regarding road transportation in and out of Gibraltar, in recent years the border issue has been raised by the United Kingdom in contacts with the Spanish authorities (see A/AC.109/2001/10, para. 22, A/AC.109/2002/11, para. 20 and A/AC.109/2004/7, para. 20). During the trilateral negotiations, the Spanish Government announced its plans to improve the flow of vehicular traffic across the fence/frontier and to improve customs and immigration control.[16]

26. There are regular airline services linking Gibraltar to the United Kingdom and Morocco. In recent years, the issue of Gibraltar's airport was reported to be holding up European Commission aviation agreements on a "single European sky".[17] For a summary of related developments, see the 2004 working paper (A/AC.109/2004/7, para. 21). On 11 December 2003, the Joint Conciliation Committee of the European Parliament and the Council approved the joint text of the framework regulation for the creation of the Single European Sky. Paragraph 5 of article 1 of that instrument suspends application of the regulation and certain measures for the airport of Gibraltar until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December

1987 come into operation. The Governments of Spain and the United Kingdom are expected to inform the Council of the date of entry into operation.[18] All parties involved have expressed the hope that during meetings of the Trilateral Forum they will reach agreement on improvements concerning expanded use of Gibraltar's airport (see para. 8 above).

27. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships. According to the administering Power, Spain removed restrictions on cruise ships sailing directly between Gibraltar and Spanish ports, and also removed the ban on Gibraltar-bound civilian air flights diverting, in the event of bad weather, to nearby Spanish airports.[5]

28. For developments relating to telephone communications and the international dialling code for Gibraltar, see the 2004 working paper (A/AC.109/2004/7, paras. 23 and 24). The issue of improved telecommunications for Gibraltar and the Campo is also on the agenda of the Trilateral Forum, including the possibility of increasing the number of Gibraltar telephone numbers accessible from the Spanish network and of facilitating mobile roaming.[16]

F. Tourism

29. The total number of visitors that arrived in Gibraltar in 2004 was 7.6 million, compared to 7.8 million in 2003. There were 61,710 hotel arrivals in 2004, a slight decrease over 2003, in which 61,743 hotel arrivals were registered.

IV. Social conditions

A. Labour

30. According to the administering Power, the 2004 employment survey placed the number of employees in Gibraltar at approximately 15,994, compared to 15,419 in 2003. In his statement at the budget session in June 2005, the Chief Minister pointed out that 575 additional new jobs were created in 2004, an increase of 3.7 per cent. At the end of 2004, the distribution of persons employed by the five largest sectors was as follows: banking and finance, 3,024; public administration and defence, 2,923; building and construction, 2,141; retail trade, 1,909; and medical and health services, 1,326. In his June 2005 budget speech to Parliament, the Chief Minister stated that the number of jobs in the economy was at an all-time high in 2005 and still growing, while the unemployment rate was at a record low, at less than 2 per cent.[8]

B. Human rights

31. For information on fundamental rights and freedoms granted by the Gibraltar (Constitution) Order of 1969, see the 2005 working paper (A/AC.109/2005/11, para. 28).

C. Social security and welfare

32. For details of the contributory schemes of the Social Security system, see A/AC.109/2001/10, paragraph 40.

D. Public health

33. The Gibraltar Health Authority is the organization responsible for providing health care in Gibraltar. It operates a group practice medical contributory scheme and gives registered persons access to free medical treatment (for a description of the available medical facilities, see A/AC.109/2001/10, paras. 42 and 43). The expenditure of the Gibraltar Health Authority for the period from 1 April 2004 to 31 March 2005 was £46.6 million. The new 200-bed St. Bernard's Hospital at Europort, representing an investment of £55 million, opened in February 2005. The Minister for Health, Ernest Britto, said that the new state-of-the-art hospital heralded a new era in health care in Gibraltar.[19]

E. Public education

34. The Education Department continues to be in charge of public education in Gibraltar. Expenditure on education as at the end of March 2005 was £20.6 million. An £11 million programme of major improvements to Government schools in 2004 was completed in 2005 with a further investment of £1 million. As at the end of 2005, there was a total of 5,321 children enrolled in Government schools, including Government nurseries. There is free compulsory education for all entitled children between the ages of 5 and 15. There are 13 primary schools — 11 Government-run, 1 private and 1 services school — with a total of 3,723 students enrolled. There were also four single-sex secondary schools — two Government-run schools, with a total of 1,997 students, and two private schools. There is also a technical and vocational college with 380 students enrolled. The number of teachers employed in Gibraltar during the 2004/2005 academic year was 349. All tertiary education is sponsored, and students satisfying entry criteria are entitled to scholarships to study in the United Kingdom. In 2005, 497 Gibraltarians were reportedly pursuing higher education studies in the United Kingdom.

F. Crime and crime prevention

35. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police. According to data provided by the administering Power, from January to December 2005, 989 persons were arrested for minor offences, such as those related to liquor, disorderly conduct and immigration violations. During the same period, 992 persons were arrested for serious crimes, such as those related to violence against the person, sexual offences, burglary and drugs.

V. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

36. A representative of Spain attended the Caribbean regional seminar on the implementation of the Second International Decade for the Eradication of Colonialism, held at Canouan, Saint Vincent and the Grenadines, from 17 to 19 May 2005. Joseph Bossano, Leader of the Opposition in Gibraltar, attended as an observer.

37. The Special Committee discussed the question of Gibraltar at its 4th meeting, on 7 June 2005 (see A/AC.109/2005/SR.4), and had before it a working paper concerning the Territory (A/AC.109/2005/11). Statements were made by the representative of Spain, the Chief Minister of Gibraltar, Peter Caruana, and by the Leader of the Opposition in Gibraltar, Joseph Bossano. On the proposal of the Chairman, the Committee decided to continue consideration of the question at its next session and, in order to facilitate consideration of the question by the Special Political and Decolonization Committee (Fourth Committee), to transmit the relevant documentation to the General Assembly.

B. Special Political and Decolonization Committee (Fourth Committee)

38. The Fourth Committee considered the question of Gibraltar at its 3rd meeting, on 6 October 2005 (see A/C.4/60/SR.3). At that meeting, statements were made by the representative of Spain, Juan Antonio Yañez-Barnuevo, the Chief Minister of Gibraltar, Peter Caruana and the petitioner, Joseph Bossano, Leader of the Opposition in Gibraltar. At its 2nd meeting, on 5 October, the Fourth Committee had heard a statement by the representative of the United Kingdom regarding the 10 listed Non-Self-Governing Territories that are administered by the United Kingdom (see A/C.4/60/SR.2). At its 6th meeting, on 11 October, the Fourth Committee adopted a draft decision on the question of Gibraltar (A/C.4/60/L.3) without a vote.

C. Action by the General Assembly

39. At its 62nd plenary meeting, on 8 December 2005 (see A/60/PV.62), the General Assembly, on the recommendation of the Fourth Committee, adopted decision 60/525 without a vote. The decision, including a modification introduced by the United Kingdom and Spain in the form of a reference to the aspirations of the Gibraltarians, reads as follows:

> "The General Assembly, recalling its decision 59/519 of 10 December 2004 and the statements agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland in Brussels on 27 November 1984 and in Madrid on 27 October 2004, and noting the establishment, pursuant to the latter, of the tripartite forum for dialogue on Gibraltar, under the statement made jointly by the Governments of Spain, the United Kingdom and Gibraltar on 16 December 2004:

(*a*) Urges both Governments, while listening to the interests and aspirations of Gibraltar, to reach, in the spirit of the 27 November 1984 statement, a definitive solution to the question of Gibraltar, in the light of relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter of the United Nations;

(*b*) Welcomes the establishment of a new trilateral forum for dialogue on Gibraltar, under the statement of 16 December 2004, separate from the Brussels Process."

VI. Future status of the Territory

A. Position of the administering Power

40. In his statement at the 2nd meeting of the Fourth Committee, held on 5 October 2005, at the sixtieth session of the General Assembly (see A/C.4/60/SR.2), the representative of the United Kingdom said the consultation process between his Government and the 10 Non-Self-Governing Territories under its administration was continuing. The seventh annual meeting of the Overseas Territories Consultative Council would be held in London in October 2005. The Council provided a forum for dialogue between democratically elected chief ministers and their equivalents from the Territories and United Kingdom Government Ministers on a range of issues including the relationship between the United Kingdom and its Territories, constitutional modernization, good governance, environmental matters and the United Kingdom's international obligations.

41. The United Kingdom Government welcomed the progress that was being made in the constitutional review process; there had been useful discussions between his Government and representatives of Gibraltar, Montserrat and the Turks and Caicos Islands. In Saint Helena, a consultative poll had rejected a revised draft constitution and that Territory was currently considering its next steps. Extensive discussions had been held with the Independence Commission set up in Bermuda to look into the implications of any move towards independence; at the Commission's request, his Government had drafted a paper setting out its position on a number of issues, which was currently being studied by the Government of Bermuda.

42. His Government, he pointed out, continued to support capacity-building projects and to promote sustainable development and good governance in the Non-Self-Governing Territories under its administration. The Overseas Territories Environment Programme continued to support the implementation of the environment charters for the Territories. His Government likewise continued to support the Territories under its administration in their efforts to strengthen relations with the European Commission and to improve access to the trade and economic and developmental aid provisions of the European Union — Overseas Countries and Territories Overseas Association Decision. It had also continued its informal cooperation with the Special Committee; in that context a visit had been made to Bermuda with a view to consider progress towards that Territory's de-listing.

43. In a separate communication regarding the Overseas Territories Consultative Council held in London in October 2005, the United Kingdom Government noted that there was useful discussion on the relationship between the United Kingdom

and the Territories and progress on constitutional modernization, which continued to take account of the Territories' particular circumstances. Other areas covered were external relations, good governance, law enforcement, financial services, transport, sustainable development and relations with the European Union. The Department of International Development organized round tables in association with the Overseas Territories Consultative Council on human rights and disaster management.

44. Speaking in exercise of his right of reply at the 3rd meeting of the Fourth Committee, held on 6 October 2005 (see A/C.4/60/SR.3), the representative of the United Kingdom welcomed the remarks by the representative of Spain, saying that issues related to Gibraltar could only be resolved in a climate of trust. The Trilateral Forum on Gibraltar and the positive progress of practical issues that the representative of Spain had described were also welcome. The United Kingdom had no doubts about its sovereignty over Gibraltar and would stand by its commitments to its people.

B. Position of the territorial Government

45. During 2005 the Chief Minister of Gibraltar, Peter Caruana, made numerous statements on the status of Gibraltar and the Territory's position with respect to the Trilateral Forum between Spain, the United Kingdom and Gibraltar, as well as regarding the negotiations between the United Kingdom and Gibraltar on constitutional reform on the other.

46. The Chief Minister addressed the Special Committee of 24 on 7 June 2005 (see A/AC.109/2005/SR.4) and the Fourth Committee on 6 October 2005 (see A/C.4/60/SR.3), impressing upon them Gibraltar's aspirations for self-determination.

47. Speaking to the Fourth Committee, the Chief Minister observed that, stripped of historical and political complications, the question of Gibraltar was really a very simple one. Over the past 1,300 years or so, Gibraltar had been Moorish for 727 years, Spanish for 266 years, and a British possession and then colony for 301 years. The Territory already enjoyed a very large measure of self-government, having its own democratically elected Government responsible for all matters except external affairs, defence and internal security, and its own Parliament that legislated in respect of all matters. Everyone, including Spain, agreed that Gibraltar should be decolonized. The single issue at stake was whether that decolonization should take place in accordance with the freely expressed wishes of the people of Gibraltar, or whether — as Spain maintained — it should be achieved by the handover of sovereignty by the administering Power, the United Kingdom, to Gibraltar's neighbour, Spain, in negotiations conducted bilaterally between them.

48. According to Mr. Caruana, Spain asserted that it was United Nations doctrine that Gibraltar's decolonization must be achieved by applying not the principle of self-determination but the principle of territorial integrity, namely, by the handover of Gibraltar's sovereignty from the United Kingdom to Spain, regardless of the wishes of the people. For the people, that would be not decolonization but recolonization. Such an undemocratic handover should be anathema to all countries governed by the rule of law. Nor could it be accepted as United Nations doctrine, for the principle of territorial integrity related properly only to the disintegration of existing States and not to the decolonization of listed Non-Self-Governing

Territories. That was the meaning of the concept of territorial integrity in the Declaration on the Granting of Independence to Colonial Countries and Peoples, and especially in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970) which, after giving classic statements of the two principles of self-determination and territorial integrity, went on, in the penultimate paragraph of the section on the principle of equal rights and self-determination of peoples, to give the only United Nations statement of the correct interrelationship between those two principles. It was self-evident, under the terms of the Declaration, that Spain was not possessed of a Government representing the people and Territory of Gibraltar, and that, since Gibraltar was not a part of Spain and would not be seceding from it, its decolonization would not result in the disintegration of Spain. The principle of territorial integrity therefore did not override the principle of self-determination in Gibraltar's case.

49. The Chief Minister noted that there was a further confusion by Spain of two other distinct issues: decolonization and sovereignty. Spain asserted that Gibraltar could not be decolonized by applying the principle of self-determination because of the existence of a so-called sovereignty dispute over the Territory, a conceptual misconception that had no foundation in United Nations doctrine or international law. To solve a sovereignty dispute relating to a Territory against the wishes of its people was not a valid means of decolonization. United Nations doctrine maintained that self-determination was an inalienable right and a basic and fundamental human right. Inalienable rights could not be overridden by the mere existence of a territorial sovereignty claim. Sovereignty disputes had often survived decolonization of a Territory by self-determination, and did not stand in the way of decolonization. Such had been the position of the International Court of Justice as well, when, in its judgment on Namibia,[20] it had declared the principle of self-determination to be applicable to all Non-Self-Governing Territories regardless of demands for integration by an interested State. Regrettably, those clear statements in United Nations doctrine and international law had been misrepresented in the reports and recommendations of recent regional seminars held by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

50. The position of the people of Gibraltar themselves was that their homeland could be decolonized only through their exercise of their inalienable right to freely decide their own political future. If the Committee, or Spain and the United Kingdom, disagreed with that position, they were urged to refer the matter to the International Court of Justice for an advisory opinion. The Territory was currently engaged in constitutional talks with its administering Power, the United Kingdom, for the negotiation of a non-colonial constitution endowing the people of Gibraltar with the greatest possible measure of self-government. The expectation was that the talks would be concluded satisfactorily early in 2006.

51. For a decade his Government had decried the concept of bilateral negotiations about Gibraltar between its administering Power and the territorial claimant, Spain. The concept was wrong, because it was completely disrespectful of the rights of the people of the Territory, and ineffective, because nothing could be agreed to without their consent. Accordingly, he had repeatedly urged the Committee to modify its annual resolution on the question of Gibraltar to reflect the fact that in practice no

bilateral negotiations had been held since September 2002 and that the United Kingdom did not intend to resume them.

52. Gibraltar applauded the establishment of the new Trilateral Forum for Dialogue, separate from the so-called Brussels Process, for it had inaugurated a realistic and viable dialogue between all parties for the benefit and prosperity of Gibraltar and the whole region, in particular the Campo de Gibraltar, the district of Spain that bordered Gibraltar. Consequently, the Committee's resolution on the question should not perpetuate a fiction by focusing on the obsolete bilateral Brussels Process. At the very least, the resolution should include a full reference to the new trilateral process and eliminate pointless quotations from the text of the Brussels Declaration. The Government of Gibraltar would continue to participate constructively in the new tripartite process, in which all parties understood that the others had not changed their position on basic questions but were willing to continue working with mutual respect.

53. During his New Year message in January 2006, the Chief Minister pointed out that there would have to be concessions by all sides regarding the negotiation process with the United Kingdom and Spain within the Trilateral Forum. Mr. Caruana primarily hoped for a practical agreement to emerge which would make Gibraltar's airport more useful for the social and political development of people on both sides of the frontier, while fully safeguarding the political interests of all sides. The territorial Government of Gibraltar was not willing to make concessions to Spain on the issue of sovereignty, jurisdiction or control of the airport. Nor was Mr. Caruana prepared to allow Spanish officials to be present in Gibraltar, acknowledging that some tension was inevitable because of "serious disagreements on fundamental issues". However, the Chief Minister described what he considered "the sensible way forward", saying that "an intelligent and modern conduct of our interests and affairs is one that achieves both defence and promotion of our political rights and aspirations and other interests as a people on the one hand, and the best possible, mutually beneficial relations with our neighbour, Spain, on the other hand". According to Mr. Caruana, the Gibraltar Government would aim to bring normality into the lives of the people, which included resolving those problems with their neighbours that could be resolved, as well as establishing the best relations possible with Spain in general, and with the Campo and Andalucia in particular, that their disagreements would allow.

54. With regard to the negotiations on a reformed constitution between Gibraltar and the United Kingdom, the Chief Minister, during his New Year message in January 2006, noted that his Government's aim was to establish a modern, non-colonial constitutional relationship between Gibraltar and the United Kingdom. Under this constitutional reform there would be change to Sovereignty. For international legal and political purposes, Gibraltar would remain a non-independent, dependency of the United Kingdom. The Chief Minister was confident that the outcome of these Constitutional negotiations with the United Kingdom would be known during the first quarter of 2006.[5]

C. Position of the Government of Spain

55. Speaking at the 3rd meeting of the Fourth Committee on 6 October 2005 (see A/C.4/60/SR.3), the representative of Spain said that the new Trilateral Forum for

Dialogue, which worked with an open agenda, had held two meetings, in February and July 2005, in which the three participants — Spain, the United Kingdom and Gibraltar — had made progress on issues relating to the Territory's airport, fence/frontier, pensions and telecommunications, and on cooperation in environmental matters, culture and sports, and legal and police matters.

56. An important innovation in the Forum for Dialogue — separate from the Brussels Process — was the fact that all three participants spoke separately for themselves, on the basis of equal participation, and without prejudice to their constitutional status, including the fact that Gibraltar was not a sovereign, independent state. Furthermore, all Forum decisions were taken by consensus; and in the case of decisions properly taken bilaterally between Spain and the United Kingdom, the understanding was that the United Kingdom would not reach agreement without the consent of the Government of Gibraltar. Gibraltar's sovereignty would be one such issue to be handled bilaterally, although of course the aspirations and interest of the people of Gibraltar would be taken into account. The atmosphere of mutual confidence and cooperation that had been instituted meant that, as the Forum proceeded with its work, if consolidated, it would be possible to begin at the appropriate moment to consider a definitive solution to the question of Gibraltar.

57. A Joint Committee of the Government of Gibraltar and the Mancomunidad de Municipios del Campo de Gibraltar had also been established in 2004 to identify and carry out mutually beneficial projects.

58. In view of the foregoing, Spain could state that it was fulfilling the mandate given to it by the General Assembly in decision 59/519 of 10 December 2004, and that it stood ready to continue endeavouring to put an end to the dispute over Gibraltar.

D. United Kingdom-Spanish negotiations

59. As outlined above (see para. 8), priority in 2005 was given to the Trilateral Forum, separate from the Brussels Process, with Gibraltar participating in its own right.

E. United Kingdom-Spanish-Gibraltarian negotiations[5]

60. The Trilateral Forum met in Malaga, Spain, on 10 and 11 February 2005, in Faro, Portugal, on 8 and 9 July 2005, in Mallorca, Spain, on 10 and 11 October 2005 and in Kent, United Kingdom, on 21 and 22 February 2006. Among the main subjects discussed were the possibility of an expanded use of Gibraltar's airport, pensions of former Spanish workers employed in Gibraltar until 1969, improvements of telephone communications between Gibraltar and Spain by increasing the number of Gibraltar telephone numbers accessible from the Spanish network and by facilitating mobile roaming, cooperation in cross-border environmental questions, cultural and sporting matters affecting Gibraltar and the surrounding area, as well as police and judicial problems.[16] According to joint statements made after the meetings, the talks were held in a cordial atmosphere and significant progress had already been made. All three participants were hoping to

prepare a full ministerial meeting at some point in the near future, in which the results of these negotiations would be turned into political decisions.[5]

F. United Kingdom-Gibraltarian discussions

61. The Government of the United Kingdom has reiterated on several occasions that it remains committed to considering proposals for constitutional change in its Territories. Talks began in 2005 aimed at modernizing Gibraltar's Constitution so that Gibraltar would remain British but in a non-colonial relationship with the United Kingdom (see paras. 49-59 above).

Notes

[1] Information contained in the present working paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations, in January 2006, as well as from official documents of the Government of Spain and published sources.

[2] "Partnership for Progress and Prosperity: Britain and the Overseas Territories", White Paper submitted to the House of Commons on 17 March 1999 by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs; reproduced in A/AC.109/1999/1, annex

[3] Government of Gibraltar press release, "Chief Minister's New Year message", 1 January 2003.

[4] www.Gibraltar.gov.uk/int/political.asp.

[5] Information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations, in January 2006.

[6] *El Pais*, Madrid, 22 December 2004; Agence France-Presse English Wire, 16 December 2004.

[7] *Panorama*, Caruana Speech, 26 January 2005 (www.Panorama.gi).

[8] *Gibraltar Chronicle*, Caruana Speech, 23 June 2005 (www.Chronicle.gi).

[9] *MercoPress*, 23 March 2005.

[10] Agence France-Presse English Wire, 25 January 2005.

[11] Organization for Economic Cooperation and Development, *Progress in Identifying and Eliminating Harmful Tax Practices*, June 2000.

[12] Foreign and Commonwealth Office press release, 20 January 2005.

[13] *Panorama*, 15 March 2005 (www.Panorama.gi).

[14] *Reuters*, 18 February 2005.

[15] Government of Gibraltar, press release, 18 February 2005.

[16] Joint statement following talks in Faro, Portugal, 8 and 9 July 2005 (www.gibraltar.gov.gi).

[17] *Reuters* and *El Pais*, 8 March 2001.

[18] European Union, Legislative Acts and Other Instruments, Regulation of the European Parliament and of the Council laying down the framework for the creation of the Single European Sky.

[19] *Gibraltar Chronicle*, 10 February 2005 (www.Chronicle.gi).

[20] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16.